

## REMARKS

The present application has again been thoroughly reviewed in light of the most recent Office Action of September 2, 2010. In view of the Amendments made herein, reconsideration of the rejection with a view toward allowance is respectfully solicited.

It is noted that Claims 20, 21 and 22 have been indicated as allowable.

Claims 2, 4-17, 23, 24 and 25 were rejected on formal grounds as being indefinite under Section 112, the Examiner indicating that parent claim 25 was unclear as to whether the insulating material or the holder was cast into the concrete sleeper.

This indefiniteness has now been corrected to recite that the insert in which the holder is inserted is cast into the concrete sleeper. Accordingly, the rejection under 35 USC §112 should be set aside.

Claim 25 is the only remaining rejected independent claim remaining in this application. All of the other rejected claims in the case now depend from Claim 25 or from claims dependent therefrom. Claim 25 has been substantially amended as more fully set forth below.

The subject matter of dependent claims 4 and 5 have now been incorporated into claim 25 and claims 4 and 5 have been cancelled. Claims 4 through 17, inclusive, were indicated as allowable if rewritten in independent form including all of

the limitations of an allowable base claim and any intervening claims.

Claim 25 stands rejected as unpatentable (35 USC § 103) over Brown *et al* (5,566,882) taken in view of Fasterding (4,802,623).

The Examiner has restated his position regarding the teachings of these prior art references. Regarding the limitation that the holder is detachably inserted, page 4 of the last action states: "should the holder assembly be damaged and need to be replaced, it is possible to carve the holder out of the tie as opposed to removing the entire viable crosstie assembly when only one component is damaged and needs repair". This interpretation is rather twisted. In Brown, if the insert is removed from the concrete sleeper, the sleeper must be destroyed and become useless. In contrast to this, the present invention allows replacement of a damaged holder easily while the sleeper does not need to be modified or destroyed.

The teachings of the present invention provide further advantages. For example, several inserts can be cast into a sleeper so that the sleeper is suitable for different track gauges. To achieve this advantage in Brown would require that several holders be cast into the sleeper. This is technically complex and very costly because the holder always needs to be unanchored. Further, holders projecting beyond the surface can cause problems during assembly.

The instant claimed invention avoids all of these disadvantages. Note that the schematic diagram of Figure 6E shows that knocking the holder out of the sleeper would result in a useless sleeper.

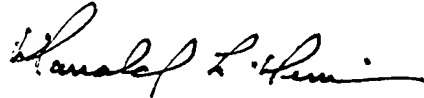
It is Applicant's position that one who had ordinary skill in this art would not be led to combine the teachings of Brown and Fasterding as suggested by the Examiner. Holders that are cast in a concrete sleeper in accordance with the Brown teaching can be arranged so that, if applicable, rails with different rail foot widths are secured. In contrast Fasterding employs guiding plates 7 by means of which the rail 2 is held in a defined position on the concrete sleeper. Hence, there is no possibility to secure rails with different foot widths on the sleeper when using fixed guiding plates. Rather, other ties would always be required wherein the guiding plates are arranged corresponding to the respective width of the rail foot.

It should also be noted that in the prior art no holder is provided that has a receptacle for a leg of an elastic clip.

Brown and Fasterding employ entirely different fixing arrangements. In this regard, the arguments previously advanced in the prior Amendment are repeated. It is also repeated that the insert of the present invention is formed of electrically insulating material.

In view of the amendments and the remarks as noted above, reconsideration of the rejection of the claims is respectfully solicited with a view to allowance of the application.

Respectfully submitted,



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